No. 93-705

DEC 30 1993

In The

Supreme Court of the United States

October Term, 1993

JOSEPH PUDLO M.D.,

Petitioner,

v.

E. ADAMSKI M.D.; J. SCHNEIDER M.D.; S. BORUSHEK M.D.; J. DADDINO M.D.; GARY FAHRENBACH M.D.; D. LARSON M.D.; B. LEVY M.D.; J. NABOLOTNY M.D.; L. PANKAU M.D.; V. VOHRA M.D. Individually; T.P. NASSOS M.D.; E.W. BEUTEL M.D.; Y. KIM M.D.; J. COUGHLIN M.D.; W. DAVIDSON M.D.; F. GRABINER M.D.; S. HADAWI M.D.; F. MARIANO M.D.; D.L. MEYERS M.D.; E.A. PETRUS M.D.; L. PUPILLO M.D.; F. HEALEY M.D.; A.R. MCCALL M.D.; J. SCHNEIDER M.D.; SISTER DONNA MARIA, CEO of the Hospital in their representative capacity and Resurrection Medical Center in Chicago, Illinois,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITIONER'S REPLY BRIEF

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REPLY TO THE COUNTER-STATEMENT OF THE CASE

By clear misstatement of allegations of the Complaint[1] combined with argument that the Seventh Circuit correctly decided the case below, respondents avoid the serious issue before the Court, whether the issue presented is important enough to warrant this Court's attention. In effect the Respondents purport to *Answer* the original complaint, a procedure sidestepped below by the filing of a motion to dismiss.

On multiple occasions the Respondents twisted[2] [or supplemented] allegations in the complaint to minimize the anti-competitive acts alleged. For example, the Complaint alleges the Internal Medicine Committee convened to discuss two cases (Comp.¶20) but at that meeting Petitioner for the first time learned of four additional cases which were supposedly examples of substandard care [which Petitioner did not then remember]. These new cases as well as the original cases were little more than "pretext" looking for reasons to terminate Petitioner from the Medical Staff. (Comp.¶¶19, 20, 21)

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[1] The First Amended Verified Complaint is attached to the Reply Brief to appraise the Court that the Petitioner's Statement of the Case was founded on the facts he alleged in the Complaint.

[2] The quote "the Hospital Board retains the ultimate responsibility for the decision of whether Pudlo's staff appointment would be terminated" (Op.Br.p.14), is not contained in the complaint. Instead, this language is the district court's mixed conclusion of law and fact on a motion to dismiss. Petitioner adequately alleged that this was not true. See *infra*.

Respondents pretend Petitioner complains of the Department of Internal Medicine, although the complaint does no such thing. The complaint addresses actions of competitors. (Comp.¶3, 22)

The essence of the Complaint (¶¶23, 26, 29, 31, 32, 33, 34, 36, 37), is that Petitioner's competitors formed a conspiratorial scheme, which was implemented through active help of the Hospital administration by abuse of each and every step in the alleged "peer review".

While Petitioner warned the Board that the process had been usurped by his competitors (Comp.¶38), Respondents *answer* that the Board conducted de novo review. Although Petitioner alleged no such thing, (Comp.¶39) "On November 14, 1991, the Board determined that the Petitioner failed to satisfy the Hospital standards for Active Staff membership and thus voted not to promote Petitioner to Active Staff." (Op.Br.p.5); the complaint went on to allege that the Hospital Board only rubber stamped the competitor's conspiracy (Comp.¶¶37, 39), thereby giving the full force and effect to the antitrust injury.

Respondents also fail to address allegations of National Practitioners Data Bank Reporting.

In the context of their answer that pretends a regular process of peer review led in effect to a regular decision not to promote "or tenure" petitioner to the Medical Staff, the reality, (as alleged in the complaint) was that Respondents usurped the peer review process for their own gain in violation of the Anti-trust laws. No "regular process" was involved and Dr. Pudlo was not only "not tenured"

but he was also adjudicated a substandard practitioner by a kangaroo court process which resulted in a hospital report to the National Practitioners Data Bank, (Comp.¶¶37, 39). Such rubber stamping gave full force and effect of the anti-trust injury, all alleged to be caused by Respondents' activity. (Comp.¶¶37, 39)

IMPORTANCE OF THE LEGAL ISSUES

Respondents attempt to minimize the issue by suggesting the Seventh Circuit correctly decided the case. This obvious non sequitur is followed by others but must not be allowed to obscure the importance of the issue presented. Petitioner does agree the case presents a question concerning "other immunities" preserved by H.C.Q.I.A. (Op.Br.p.18). The question is what are these immunities? The Seventh Circuits opinion extends them beyond all reason and certainly accentuates the existing conflict between the circuits. The Seventh Circuit's decision explicitly recognizes this conflict. What is most important is that this case could not be more timely, for as managed competition becomes the grist for the congressional debate, such uncertainty about the rules of competition in an industry concerning 1/7 of the G.N.P. is simply inexcusable.

If the Seventh Circuit Court is correct, this Court should tell it to the country as a whole. If it is not, that is also of surpassing importance. This Court's petitions are not the proper venue for arguing the merits as Respondents appear to believe.

The bottom line is that the question presented is of surpassing social and economic importance to the country. It deals with no "abstract assertions" by Petitioner that individual members of the medical staff can enter into a conspiracy (Op.Br.p.15) The petitioner alleges just such a conspiracy and abuse of the peer review process, (Comp.¶¶3 & 36), with the Hospital Board's refusal to conduct de novo of actively supervising the process, (Comp.¶¶37, 38).

Petitioner respectfully requests that Certiorari be granted.

DUSAN VUCICEVIC
Attorney for Petitioner

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

JOSEPH PUDLO, M.D., Plaintiff, V.	)	NO. 91 C 7474 JUDGE ASPEN MAGISTRATE GUZMAN
E. ADAMSKI, M.D., JR.; J. SCHNEIDER, M.D.; S. BORUSHEK, M.D.; J. DADDINO, M.D.; GARY FAHRENBACH, M.D.; D. LARSON, M.D. B. LEVY, M.D.; J. NABOLOTNY, M.D.; L. PANKAU, M.D.; V. VOHRA, M.D., individually T.P. NASSOS, M.D.; E.W. BEUTEL MD.; Y. KIM M.D.; J. COUGHLIN M.D.; W. DAVIDSON M.D.; F. GRABINER M.D.; S. HADAWI, M.D.; F. MARIANO M.D.; D.L. MEYERS M.D.; E.A. PETRUS, M.D.; L. PUPILLO, M.D.; F. HEALEY, M.D.; A.R. MCCALL, M.D.; J. SCHNEIDER, M.D.; SISTER DONNA MARIA, Chief Executive Officer of the Hospital in their representative capacity and Resurrection Medical Center in Chicago, Illinois, Defendants.	)	

FIRST AMENDED VERIFIED COMPLAINT

NOW COMES Joseph Pudlo, M.D. ("Plaintiff") by and through his attorneys. Thomas S. Moore and Dusan

Vucicevic, M.D., J.D., and complains against the Defendants as follows:

Jurisdiction and Venue

Counts I, II and III arise under the antitrust laws of the United States, more particularly, Section I & II of the Sherman Antitrust Act (15 U.S.C. Section 1, *et seq.*) and Section 7 of the Clayton Act (15 U.S.C., Section 18). This Court has jurisdiction of these actions pursuant to 15 U.S.C., Section 15-22 & 26; 28 USC 1337 as a result of Defendants' violations of Sections I & II of the Sherman Act and Section 3 of the Clayton Act, (15 U.S.C. Section 14). Counts IV and V are a pendent tort and contract action.

The Parties

1. Plaintiff, Joseph Pudio, M.D., is a board qualified internist and offers to the public general internal medicine services in the northwestern area of the city of Chicago which is defined by the following zip codes: 60631, 60656, 60648, the western parts of the 60646; 60530 and the northern parts of 60634.

2. Defendant, E. Adamski, M.D., is an internist and chairman of the Department of Internal Medicine and member of the Executive Committee at the Resurrection Medical Center. Dr. Adamski has offices and practices general internal medicine two miles from the Plaintiff and is in direct competition in the relevant market.

3. Defendants, J. Schneider, M.D.; S. Borushek, M.D.; J. Daddino, M.D.; Gary Fahrenbach, M.D.; D. Larson, M.D.; B. Levy, M.D.; J. Nabolotny, M.D.; L. Pankau, M.D.; and, V. Vohra, M.D. are internists, Plaintiff's competitors, members of the Internal Medicine Committee, and have offices in the relevant market.

4. Defendants, T.P. Nassos, M.D.; Gregory Fahrenbach, M.D.; E.W. Beutel, M.D.; J. Coughlin, M.D.; J.L. Daddino, M.D.; W. Davidson, M.D.; F. Grabiner, M.D.; S. Hadawi, M.D.; Y. Kim, M.D.; F. Mariano, M.D.; D. L. Meyers, M.D.; E. A. Petrus, M.D.; L. Pupillo, M.D.; F. Healey, M.D.; A.R. McCall, M.D.; and, J. Schneider, M.D. were all at all relevant times, members of the Executive Committee at Resurrection Medical Center.

5. Sister Donna Maria, the Chief Executive officer of the Resurrection Medical Center, at all relevant times in her official capacity attended the Internal medicine, Executive and the Hearing committee meetings. She is also the voting member of the Governing Board of the Medical Center.

6. Defendant Resurrection Medical Center (hereinafter "Hospital") is an Illinois not for profit corporation. It is primary market for provision of hospital services in the northwestern areas of the city of Chicago.

MARKET

7. The relevant product market is services of general internal medicine. At all relevant times the Plaintiff was in competition with the individual Defendants referred to in paragraphs 2 and 3 above.

8. Plaintiff and the defendants (paragraphs 2 & 3 above) offer services of general internal medicine to the consumers in the relevant market. Doctors sell their services to the consumers who are insured by Medicare, HMO's and private insurance companies. Medicare determines the price of the services and the physicians receive the same payment per unit of service to a patient. HMO's pay physicians a monthly per capita fee for every patient signed up with them. However, HMO's in the market have different per capita fees. HMO's prefer physicians like Plaintiff who are willing to accept patients at lower per capita fees. Private patients choose a physician based on their office hours and fees. Plaintiff charges $40.00 for the initial office visit and $30.00 for the follow up visits. Plaintiff has office hours three times a week from 12:00 p.m. till 8:00 p.m. He also spends more time with a patient than his competitors. He speaks fluent Polish and some non-English speaking patients chose him also for his additional ability to better understand them. Defendant Adamski charges $60.00 for a first time office visit and $35.00 for a follow up. Adamski has office hours ending at 5:00 p.m. Defendants named in paragraph 3 charge for their first and follow up office visits much higher than plaintiff.

9. The relevant geographic market is the northwestern area of the city of Chicago, Cook County, Illinois, which is defined by the following zip code numbers: 60631, 60656, 60648, the western parts of the 60646, 60530 and the northern parts of 60634. The Plaintiff was steadily increasing his share of the market by offering services more sensitive to the patient's needs at lower prices.

Jurisdictional Interstate Commerce Requirement

10. The conduct described herein has substantial impact upon interstate commerce. The Defendants' acts and business conduct described below, at all times material herein, affected the interstate commerce by:

a. Medical Center's purchase of medical supplies, products and equipment from the manufacturers and dealers out of state. The interstate flow of funds for payments of the supplies and collection for services sold, was not insignificant and thereby affected interstate commerce.

b. The Medical Center's proximity to O'Hare International Airport makes it a primary medical facility for a large number of patients, from all parts of the United States, who receive medical care at the Defendant's facility. Parties to this action, when on call duty at the Medical Center, compete for this not insignificant number of interstate patients.

c. The Medical Center and all physicians and surgeons parties hereto, contracted with Medicare, HMO's and PPO's located outside the State of Illinois to provide services to their subscribers and receive out of state revenues directly from those and other insurers which constitute a substantial share of their total revenues.

d. Due to the Plaintiff's expulsion from the Medical Center and the resultant blemish on his record, Plaintiff will be unable to practice medicine anywhere in the United States. The reporting of the Defendants' disciplinary action, pursuant to the Federal and State laws, are mandatory to the National Medical Practitioners Data Bank (located outside of Illinois) and the Illinois State Medical Disciplinary Board. Any hospital in the U.S., where the Plaintiff may apply for a

staff membership, is mandated to obtain the information from these report depositories.

e. The conduct complained of herein is an exclusion of a competitor (the plaintiff), under the guise of a challenge to his professional competence. The reports generated subsequent to the Defendants' pretextual disciplinary proceedings will seriously impugn the Plaintiff's professional reputation. Due to the Defendants' actions, a reasonable and the most probable inference is that the Plaintiff will not be able to acquire any further hospital affiliations, therefore he is effectively excluded from competing in any relevant product market in the United States.

f. Medicine is a strictly regulated profession, therefore it is reasonable and most probable to infer that the Plaintiff will not be able to acquire medical licensure in any jurisdiction in the United States. Therefore by the action of the defendants, Plaintiff is precluded from competing in provision of inpatient and outpatient medical services anywhere in the United States.

BACKGROUND FACTS

11. On or about August 1, 1990, Plaintiff bought a primary care practice from Dr. Leo Stolarski with offices at 5945 North Milwaukee Avenue, Chicago, Illinois. For more than thirty years, Dr. Stolarski has been using Resurrection Hospital as the only hospital facility to admit patients from his practice. In order to provide services of general internist in this practice, Plaintiff has applied and obtained a medical staff membership with privileges in the Department of Internal Medicine at Resurrection Medical Center.

12. In order to keep admissions of all patients from Stolarski-Pudlo practice to Resurrection, the hospital has purchased the tangible assets from Dr. Stolarski. Dr Pudlo was told that a lease-pay back arrangement for these assets was an incentive, which should have resulted in net $6,000.00 payment to him, for his best efforts to promote and enlarge his practice.

13. From August 1, 1990, through November 18, 1991, the Plaintiff practiced general internal medicine without any restrictions. The Plaintiff admitted and successfully treated more than 300 patients from August 1, 1990 through November 18, 1991.

14. A lease-pay back agreement, incidental to Plaintiff's practice purchase, called for Plaintiff's review of the medical records for the Quality Assurance Committee. The hospital never called or offered Plaintiff to perform services agreed upon. Plaintiff was denied the payments in violation of the agreement in the amount $6,000.00.

15. In the middle of June 1991, Defendant Adamski verbally advised Plaintiff, that the Internal Medicine Department reviewed care in a case of his, and that the case is further being considered by the committee. He further stated that unless Plaintiff explains some of the alleged deficiencies his practice at the Hospital may be in jeopardy.

16. A few days later, Plaintiff received a letter from Defendant Adamski dated June 17, 1991, (Exhibit A attached) which request that the Plaintiff explain some aspects of the medical care on the same patient. After he received the letter, Plaintiff went several times to the Medical Records Department of the Hospital and

requested the record in question. The answer at all times was that the chart is not available for his review, since it is being reviewed by the Quality Assurance Committee.

17. On July 17, 1991, the Plaintiff received a registered letter from Defendant Adamski indicating that the Internal Medicine Committee had not received a response to its letter dated June 17, 1991 (Exhibit B.) This letter threatened that failure to respond may jeopardize Plaintiff's staff appointment. Plaintiff also received another letter dated July 17, 1991 (Exhibit C), Adamski's second letter as of the same date, questioning Plaintiff's recording of some aspects of care rendered to another patient.

18. Plaintiff responded in writing to defendant Adamski's second letter of July 17th (referred above), addressing a letter to Defendant Adamski on August 1, 1991 (Exhibit D). This letter was sent prior to the next regularly scheduled meeting of the Department of Internal Medicine. Unable to respond to the first letter dated June 17, 1991 (Exhibit A) the Plaintiff again asked Medical records Department for the record, subject of the aforesaid letter, however he was again denied access to that record.

19. Without waiting for August meeting Defendant Adamski met on July 31, 1991 with a group of internists, which Plaintiff has reason to believe included physicians in competition with Plaintiff. On information and belief Plaintiff states that defendants discussed and agreed upon the ways to exclude Plaintiff from the hospital and means unjustified and pretextual.

20. At the beginning of August, Plaintiff received a certified letter dated July 31, 1991 from Defendant

Adamski, (Exhibit E) asking him to attend the regular August 9, 1991 Internal Medicine Committee meeting for purposes of explaining alleged deficiencies for the two cases committee was to review. Defendant Adamski failed to disclose to Plaintiff prior to the meeting the identity of medical records to be reviewed, whether these records were selected in the process of ongoing quality assurance or were the records reviewed out of the usual quality assurance process. Defendant Adamski failed to disclose alleged deficiencies in any of the records and failed to identify internists who were going to be responsible for the review.

21. The Plaintiff attended the August 9, 1991 meeting where he learned for the first time that besides the two records (See Exhibits A & C) additional four medical records of were presented to the Department. During the meeting, the plaintiff was asked several questions about all six cases. The Plaintiff did not have any opportunity to review five of the records. He was not prepared to discuss the cases especially a case he treated a year prior to the meeting.

22. Defendant Adamski and all of the other Defendant members of the Internal Medicine Committee, upon conclusion of the review, recommended to the Executive Committee termination of the Plaintiff's medical staff appointment.

23. The Executive Committee consists of sixteen members and four of these members are from the Department of Internal Medicine. The other members are representatives of the Hospital based departments, such as Radiology, Emergency Room and Pathology, and other

clinical departments. Generally, physicians on the committee follow the recommendation of the members who practice in the same field of medicine as the reviewed physician. In other words, the other members of the Executive Committee deferred to the decision of the internists.

24. The Executive Committee recommended to the Governing Board to terminate the medical staff membership of the Plaintiff. On September 13, 1991, Resurrection Medical Center by its C.E.O., Sister Donna Marie, directed a letter to the Plaintiff, (Exhibit F) informing him that his medical staff appointment had been terminated by the action of the governing board.

25. The Medical Staff Bylaws provide for the appeal and a hearing before a Hearing Committee to the medical staff members whose appointment is terminated. The Plaintiff requested a hearing (Exhibit G). The Hearing (aka Appeals) Committee was called for October 9, 1991, by its Chairman Dr Edward Gorney. (Exhibit H)

26. At the hearing, Defendant Adamski was present representing the Internal Medicine Committee and the Executive Committee (Exhibit I – Resurrection Medical Staff Bylaws: Article VI, Section 3 b) (IV) (c). There was no mention at the Hearing regarding the criteria required for the prior review of the cases. [Bylaws (Article III, Section 5 9c)]

27. The Plaintiff was accompanied by his attorney. Plaintiff's attorney at the beginning of the Hearing requested that the Chairman of the Hearing Committee establish and articulate the rules of the procedure, which are to govern the Hearing, to assure that all participants

have a reasonable opportunity to present evidence and to maintain decorum. [Bylaws: Article VI, Section 3(b) IV (a)]. Plaintiff's counsel asked that in addition to the Hospital Bylaws, the rules established by the Health Care Quality Improvement Act (HCQIA) also be followed. Sister Donna Marie denied the request stating that the Hearing Committee had already established the rules in the past and therefore would be governed exclusively by the Bylaws and not by HCQIA regulations.

28. Dr. Gorny, the Chairman of the Hearing Committee, ruled that Defendant Adamski shall have an opportunity to speak first and Plaintiff shall be allowed to follow Adamski's testimony. When requested by Plaintiff's attorney to establish a standard of care by which the evidence is to be evaluated, the Chairman Gorny refused to articulate any standard of care. Plaintiff's request that expert witnesses be allowed to testify as to the standard of care was denied.

29. When Defendant Adamski began to testify he failed to explain to the Committee deviations in the care rendered by Plaintiff in the cases that were reviewed. Adamski was completely unable to discuss Plaintiff's alleged deficiencies. He merely read portions of the vague minutes from Internal Medicine Committee. Since Defendant Adamski was unable to provide any specific deficiencies, the members of the Hearing Committee began questioning Plaintiff. The plaintiff's attorney objected and requested a directed verdict in Plaintiff's favor. That request was denied by the Chairman of the Hearing Committee. Thereafter, various members of the Committee threatened Plaintiff's counsel that if he continued to object they would hold against the Plaintiff. Plaintiff's

attorney than requested a permission to cross examine Defendant Adamski, who immediately threatened to leave the hearing if the Plaintiff's attorney was given permission to cross examine him. [Bylaws: Article VI, Section 3(b)(IV)(d)].

30. Plaintiff was then subjected to inquisitorial questioning by the members of the Hearing Committee. Plaintiff's expert witness, Dr. Elliott Kroger (Exhibit J. Affidavit and Curriculum vitae) was permitted to testify in support of Plaintiff's statements. The meeting was then adjourned.

31. At the beginning of the Hearing, Defendant Adamski consulted with the members of the Hearing Committee for fifteen minutes while the Plaintiff, his expert witness and counsel were asked to wait outside the hearing room. Similarly, after the Hearing was adjourned, Defendant Adamski was allowed to remain in the room during deliberations while the Plaintiff, his attorney and expert witness were again, excluded.

32. Medical Staff By-laws require that the Hearing Committee send its report to the Plaintiff by certified mail within twenty days of the Hearing. [Article VI, Sec. 3.(i)] The Defendant Hospital violated its own bylaws and the HCQIA by failing to send the report to the Plaintiff.

33. At its November 6, 1991 meeting, the Executive Committee reviewed the Hearing Committee's report dated October 9, 1991 and ruled that it was incomplete and requested from Chairman Dr. Gorny, (Exhibit K) that

a more detailed report be submitted to the Executive Committee for further consideration. At the same meeting, the Executive Committee recommended termination of Plaintiff's appointment.

34. On November 7, 1991 Plaintiff verbally requested from Defendant Nassos Chairman of the Executive Committee to stay its decision to terminate him, since a detailed Hearing committee report was pending. Some time later Plaintiff learned that both reports state that the Hearing Committee unanimously recommended continuation of Plaintiff's Medical Staff Membership at the Hospital. [First dated October 9, 1991 (Exhibit L) and second dated November 12, 1991. (Exhibit K above)].

35. The final recommendation of these reports referred in paragraph above states "Plaintiff should be removed from the Provisional Status". This decision must be construed according to Resurrection Medical Staff Bylaws Article III, Section 5, (d) "Failure to have Provisional Status removed at the end of Fifteen month period automatically terminates the appointment (Exhibit I above)

36. On information and belief the Executive Committee knew or should have known that defendant Adamski is Plaintiff's direct competitor. It should not have permitted that the decision of the Hearing Committee by impartial physicians be substituted by the scheme of the competitors. Moreover it joined the conspiracy when it willfully failed to follow a good faith procedure in Plaintiff's evaluation.

37. On information and belief the Plaintiff states that Defendant Adamski used his positions and influence

in pressuring the executive Committee and the Hospital to terminate Plaintiff.

38. Plaintiff, by his attorney, drafted on November 11, 1991 a petition and instructed his staff to send it directly to the members of the Governing Board prior to their November 14, 1991 meeting. The access to the names and addresses of the members were denied to him by the Hospital administration. Since Sister Donna Marie, by her agents so requested, communication to the Governing Board went through her office.

39. The Governing Board of the Medical Center ignored the favorable recommendation of the Hearing Committee, failed to remand the recommendation to the Executive Committee and order reconsideration untainted by competitors. Instead the Governing Board proceeded without having full record. Moreover it made its decision without giving an opportunity to Plaintiff to identify and present the errors of the committees below, therefore in fact rubber-stamped the recommendation on the Executive Committee by terminating Plaintiff's medical staff appointment.

COUNT I

Sherman Act, Section 1 per se exclusion and boycott

40. Plaintiff realleges and incorporates, by reference, paragraphs 1 through 39 of this Complaint as paragraph 40 of this Count I.

41. The Defendant internists have combined and conspired to eliminate the Plaintiff as their competitor

from Resurrection Medical Center and relevant market. The defendant internists will gain the additional patients by excluding the Plaintiff. Dr. Adamski and Defendant internists have met on various occasions, from June 17, 1991 through November 14, 1991, and discussed the Plaintiff's practice profile and his expulsion from Resurrection Medical Center and relevant market. Defendants resolve and scheme were communicated to the Plaintiff by the Defendant Adamski. The other Defendants have joined in the combination by ratifying group boycott initiated by the internist.

42. Exclusion of the lower priced competitor shall injure the consumers. Private pay and the patients with the standard insurance will be deprived of the more available services at lower prices. The HMO patients are being deprived of the services in the hours when the competitors do not provide any services at all. Medicare patients will be deprived of services by a physician who spends more time with them and thus render better care than his competitors. The consumers preference for Plaintiff has been reflected in higher numbers of private and especially HMO patients which has been steadily increasing from the time he has purchased his practice. Finally HMO delivery contractors will be denied the opportunity to choose lower priced services when selecting general internal medicine providers.

43. The defendants will financially gain by exclusion of their present competitor. Their gains will continue in the future and are to be generally evaluated by the impact of the restraint not just on the Plaintiff, but rather by the impact of the restraint on the other participants

and potential participants in the market from which the Plaintiff has been excluded.

44. If the combination of the conspirators to exclude Plaintiff and other potential participants remains in the relevant market without proper legal remedies, the unfair restraint of trade shall seriously prevent operation of the market.

WHEREFORE, Defendants, unless restrained, will continue with their conspiracy alleged above and thereby prevent Plaintiff from being able to provide general internal medicine services to alternative delivery systems and to medicare patients in the relevant market area. Plaintiff is entitled under Title XV, United States Code, Section 26 to injunctive relief against the loss of business due to Defendants' continuation of the conspiracy in violation of Title XV, United States Code, Section 1.

The Plaintiff also prays for the following: A) Damages in the amount to be determined at trial and trebled. B) For reasonable attorneys' fees. C) For his costs and disbursements herein. D) For such other relief as may be appropriate.

COUNT II

Sherman Act, Section 1 per se exclusion and boycott

45. Plaintiff realleges and incorporates, by reference, paragraphs 1 through 39 of this Complaint as paragraph 45 of this Count II.

46. The Defendant internists have combined and conspired to eliminate the Plaintiff as their competitor

from Resurrection Medical Center and relevant market. The defendant internists will gain the additional patients by excluding the Plaintiff. Dr. Adamski and Defendant internists have met on various occasions, from June 17, 1991 through November 14, 1991, and discussed the Plaintiff's practice profile and his expulsion from Resurrection Medical Center and relevant market. Defendants resolve and scheme were communicated to the Plaintiff by the Defendant Adamski. The other Defendants have joined in the combination by ratifying group boycott initiated by the internist.

47. The reporting of the Defendants' disciplinary action, pursuant to the Federal and State laws, are mandatory to the National Medical Practitioners Data Bank (located outside of Illinois) and the Illinois State Medical Disciplinary Board. By operation of relevant federal and state laws, the defendants pretext to the local exclusion and boycott will be elevated to nationwide exclusion. The unfairness of such restraint is to be evaluated not just by the impact on the Plaintiff, but rather by the impact of the restraint on the other participants and potential participants in the markets from which the Plaintiff has been excluded.

48. If the combination of the conspirators to exclude Plaintiff and other potential participants remains in the relevant market, than as a matter of law, without proper and prompt remedies directed by this Court, it will present the unfair restraint of trade anywhere in the United States.

WHEREFORE, Defendants, unless restrained, will continue with their exclusions alleged above and thereby

prevent Plaintiff from providing services in the Hospital's market area. The Plaintiff prays this Honorable Court to expunge his record of any reference to the adverse action and inform the National Medical Practitioner's Data Bank and the Illinois Medical Disciplinary Board that their records are to be expunged of the Defendant's report of an adverse action. In addition to the above, the Plaintiff is entitled under Title 15, U.S.C. Sec. 26 to injunctive relief against the loss of business through Defendants' continuation of the exclusion in violation of 15 U.S.C. Section 1.

COUNT III

Conspiracy to Monopolize

49. Plaintiff incorporates by reference and repeats the allegations of paragraphs 1 through 39 inclusive.

50. Beginning from June 1991 and continuing to the present the defendants have been engaged in unlawful combination and conspiracy to monopolize trade and commerce in the provision of general internal medicine services in violation of Section 2 of the Sherman Act, 15 U.S.C. Section 2. Individually named defendant internists and the other physicians yet unknown to the plaintiff have together 80% of the market in general internal medicine, a market share that has been increasing as a result of anti competitive practices.

51. Defendants have, pursuant to the aforesaid combination and conspiracy demonstrated their intent to exclude actual and potential competitors from the relevant market. The defendants have intended to protect their common interests against those of the plaintiff.

51. All of the above actions were undertaken with the intent and purpose to exclude plaintiff from the market for general internal medicine services.

52. As direct and proximate result of the violation of Section 2 of the Sherman Act, alleged herein, plaintiff has been damaged and is continuing to suffer damages. Wherefore plaintiff prays the Court, that defendants conduct herein alleged by adjudged to be in violation of Section 2 of the Sherman Act, prohibiting combination and conspiracies to monopolize.

COUNT IV

Intentional Interference with Contract

53. Plaintiff incorporates by reference and repeats the allegations contained in paragraphs 1 through 39.

54. Beginning on August 1, 1991 and continuing to the present the plaintiff has had business relationships with his private paid patients, contracts with alternative care delivery assistance and medicare patients. The defendants knew about these relationships. The defendants intentional actions alleged caused or induced plaintiffs patients or HMO providers to terminate their contracts with plaintiff, constitute unlawful interference with plaintiffs contractual relations and business advantage.

55. Defendants knew or had reason to know that their wrongful interference with plaintiffs contracts such as their termination of Plaintiff's medical staff privileges at the Resurrection Medical Center were unjustified. It will proximately injure plaintiffs trade relations with

third parties as well as its ongoing business. Plaintiff would have continued the business relationship with Resurrection preferred provider group as well as the other HMO's and individual patients, absent conduct of defendants who deliberately interfered with said contracts and prospective contracts for their own gain.

56. As a direct and proximate result plaintiff has been injured in the form of lost profits and injuries to trade relations and good will.

Wherefore, plaintiff prays this Court to award him damages for lost profits and injury to business and goodwill in the amount yet to be determined plus punitive damages.

COUNT V

(Action for Breach of Contract)

57. This is an action for judicial review of the adverse action by Defendants against Plaintiff. The Court should assume jurisdiction for the following reasons:

(a) Jurisdiction of the Court is, as set forth above, an action for violation of Federal Antitrust laws; (b) This cause of action is separate and independent of the causes of action set forth in Antitrust Counts, but is between the same parties and based on the same nucleus of the operative facts as set forth in those Counts; and (c) Judicial economy, convenience and fairness to the parties herein will be furthered if the whole case is tried at one time.

58. Plaintiff realleges and incorporates, by reference, paragraphs 1 through 39 of this Complaint as paragraph 58 of this Count V.

59. Resurrection Medical Center Bylaws provide that the first year appointment will be termed provisional and that termination of this appointment can only be for cause. To fairly and completely evaluate professional competence, a systematic review must be established for newly appointed member physicians. The appointee should be informed of the evaluation process and its standards at the time of appointment. Moreover, the Bylaws are specific that the cause is to be determined through a fair hearing process. The Defendant hospital failed to follow its own Bylaws. Furthermore, the Medical Center joined the conspirators by substituting a "no cause" finding of the Hearing Committee with their pretextual scheme of professional inadequacy.

60. The ad-hoc review of the Plaintiff's medical charts conducted by the hospital on behalf of the conspirators was arbitrary and pretextual. The Plaintiff, to the best of his knowledge and belief, knows of no other physician being reviewed as capriciously and egregiously as he was.

61. The Plaintiff was granted a hearing without notice regarding the charges brought against him. The hearing was flawed by the inability of the Committee to establish and follow a fair procedure as requested in the Bylaws. The Plaintiff was prejudiced by the Committee's failure to timely send its favorable report to the Executive Committee and Governing Board of the hospital as well as to the Plaintiff as required by Hospital Bylaws. Although the Committee's report was favorable to the Plaintiff it had no effect on the proceedings at the hospital since its content and transmittal to the relevant committees were deliberately manipulated by the Defendants,

who thereby prevented even this minutia of fairness to ever so slightly impact on the devastating results of the egregious proceedings conducted against the Plaintiff.

WHEREFORE, Plaintiff respectfully prays this Court provide the following remedies:

a. Return Plaintiff to his Medical Staff status quo at the time of the improperly action;

b. Expunge Plaintiff's record of any reference to the adverse action and inform the material Medical Practitioner, Data Bank and the Illinois Medical Disciplinary Board that their records are to be expunged of the Defendant's report of an adverse action; and,

c. Any other remedies considered appropriate by the Court.

Respectfully Submitted,
JOSEPH PUDLO, M.D.,

BY: /s/ Dusan Vucicevic, M.D.
One of His Attorneys

Thomas S. Moore
McCarthy, Duffy, Neidhart & Snakard
180 North LaSalle Street, Suite 1400
Chicago, Illinois 60601
(312) 726-0355

Dusan Vucicevic, M.D., J.D.
2215 York Road, Suite 102
Oak Brook, Illinois 60521
(708) 571-2103

VERIFICATION

I, Joseph Pudlo M.D., after first being duly sworn under oath, depose and state that I have read the attached Complaint, and am familiar with the facts contained therein and that said facts are true and correct to the best of my knowledge.

/s/ Joseph Pudlo
JOSEPH PUDLO

SUBSCRIBED AND SWORN TO
BEFORE ME THIS 17th DAY
OF December, 1991.

/s/ Lauri M. Goodwin
NOTARY PUBLIC

" OFFICIAL SEAL "
LAURI M. GOODWIN
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 10/31/94

Plaintiff's Exhibit A

June 17, 1991

QUALITY ASSURANCE
CONFIDENTIAL

To: Dr. Pudlo
Internal Medicine

From: Dr. Adamski /s/ EH/MW
Chairman, Internal Medicine

Re: Prugar, Nellie
09-63-42

The medical record in caption was referred to the Internal Medicine Committee from review from the Quality Management/Risk Management screening process. Several issues were raised by the Committee. First, the patient was admitted 2-26-91 with a one-week history of shortness of breath, a productive cough and blood-tinged sputum. Your initial impression was pneumonitis; chest X-ray showed no evidence of active infiltrate or effusion. The WBC was 10.3 with a normal differential; patient was afebrile. Please substantiate your diagnosis of pneumonitis.

Secondly, during this hospitalization, on 3-3-91, the patient experienced a syncopal episode while in the bathroom of her hospital room. The patient was subsequently transferred to a monitored bed, which revealed a bradycardia. In view of this syncopal episode, was further consideration given to a possible cardiac etiology?

Finally, the patient was discharged 3-6-91 and readmitted the same day with recurrent syncopal episode, and subsequently expired. Please address the possibility of a cardiac-related syncopal episode.

Please respond in writing to the Internal Medicine Committee prior to our July meeting. Thank you.

EA:MW:rs

cc: Georgia

Plaintiff's Exhibit B

July 17, 1991

To: Dr. Pudlo
Internal Medicine

From: Dr. Adamski /s/ CJA
Chairman, Internal Medicine

Re: Memo dated June 17, 1991 (attached)
Prugar Nelli
09-63-42

The memo in caption was-sent to you requesting a written response to the Internal Medicine committee prior to the July meeting. To date, no response has been received. This is a reminder. Failure to respond may jeopardize your staff appointment.

EA:MW:rs

Attachment

VIA REGISTERED MAIL - RETURN RECEIPT REQUESTED

Plaintiff's Exhibit C

July 17, 1991

To: Dr. Pudlo
Internal Medicine

From: Dr. Adamski /s/ EH/MW
Chairman, Internal Medicine

Re: Todd, Robert
12-44-19

The medical record in caption was referred through the Clinical Pertinence Screen for review by the Internal Medicine Committee. Several deficiencies were identified:

-no review of systems

-physical exam inadequate regarding inventory of body systems, comprehensive physical assessment

-discharge instructions not documented

-no mention of chronic renal failure in the progress notes

In addition, the patient was admitted with a BUN of 115 and Creatinine of 6.6, with no mention of azotemia in the progress notes. In view of these findings, please comment in writing before the August Internal Medicine Committee meeting.

EA:MW:rs

Plaintiff's Exhibit D

JOSEPH Z. PUDLO, M.D.
Internal Medicine
5945 N. Milwaukee Ave.
Chicago, IL 60646

Telephone: (312) 631-2442

August 1, 1991

Chairman, Internal Medicine
Edwin Adamski Jr., M. D.
Resurrection Hospital
7447 W Talcott
Chicago, Il 60631

Dear Dr. Adamski,

This letter is regarding your correspondence of 7-17-91, pertaining to Robert Todd. Please review the medical chart because patient had a review of systems covered in the history of present illness, he had just been in the hospital on 3-18-91 and also two previous admissions for 1991. The physical exam covered a general inventory of body systems as recorded on 5-1-91. Chronic Renal Failure (CRF) was documented in the past medical history, in the impression on 5-1-91 and again on a progress note of 5-3-91 thus there was no need to mention azotemia. Discharge Instructions were given to the patient verbally. There is no progress note documenting this, so I do not know if it is missing or misplaced.

Thank you,

/s/ Joseph Z. Pudlo, M. D.
Joseph Z. Pudlo, M. D.

Plaintiff's Exhibit E

Resurrection
Medical Center

7435 West Talcott Avenue Chicago, Illinois 60631-3746
312-774-8000

CERTIFIED MAIL P 718 689 434

July 31, 1991

Joseph Pudlo, M.D.
5945 N. Milwaukee Avenue
Chicago, IL 60631

Dear Dr. Pudlo:

I am writing you concerning two previous letters that were sent to you dated June 17, 1991, and July 17, 1991, respectively. As of now, you have failed to respond to these letters. We ask that you please be present at the next Internal Medicine Committee meeting on Friday, August 9, 1991 at 7:30 AM in the Administrative Conference Room. Your failure to appear may jeopardize your Provisional Status review.

Sincerely,

/s/ E. J. Adamski, Jr., M.D.
E. J. Adamski, Jr., M.D., Chairman
Internal Medicine

EJA:gc

Plaintiff's Exhibit F

Resurrection
Medical Center

7435 West Talcott Avenue Chicago, Illinois 60631-3746
312-774-8000

September 13, 1991

CERTIFIED MAIL NO. P 718 689 436

Joseph Pudlo, M.D.
5945 N. Milwaukee Avenue
Chicago, IL 60646

Dear Dr. Pudlo:

As you know, your Provisional Status review was up for consideration. Acting on the recommendation of the Executive Committee, it was the decision of the Governing Board to not remove you from Provisional Status.

Per the Resurrection Medical Center Medical and Dental Staff Bylaws, this automatically results in the termination of your staff appointment at Resurrection Medical Center. This will become effective within seven (7) days of your receipt of this letter.

Sincerely,

/s/ Sister Donna Marie, C.R.
Sister Donna Marie, C.R.
Executive Vice President/CEO

SDM:gc

cc: Sister Bonaventure, C.R.
T. Nassos, M.D.
E. Adamski, Jr., M.C.
M. Marchi, M.D.

Plaintiff's Exhibit G

JOSEPH Z. PUDLO, M.D.
Internal Medicine
5945 N. Milwaukee Ave.
Chicago, IL 60646

Telephone: (312) 631-2442

September 19, 1991

Resurrection Hospital Medical Center
c/o Sister Donna Marie, C.R.
Executive Vice President/CEO
7435 W. Talcott Avenue
Chicago, Illinois 60631

Dear Sister Donna Marie, C.R.,

I have received your letter stating my termination from the Medical Staff at Resurrection Hospital dated September 16, 1991 and I would like to appeal this decision effective immediately. I would like to know if there is a way of stopping or postponing this action by the Hospital.

Sincerely yours,

/s/ Joseph Z. Pudlo, M.D.
Joseph Z. Pudlo, M.D.

Plaintiff's Exhibit H

Resurrection
Medical Center

7435 West Talcott Avenue Chicago, Illinois 60631-3746
312-774-8000

September 26, 1991

CERTIFIED MAIL NO. P 718 689 439

Joseph Pudlo, M.D.
5945 N. Milwaukee Avenue
Chicago, IL 60646

Dear Dr. Pudlo:

A meeting of the Appeals Committee has been called on behalf of your request for a hearing. This meeting is scheduled for Wednesday, October 9, 1991 at 8:30 AM in the Board Room. You are expected to attend this meeting. I would suggest that you refer to Article VI, Section 3, of the Resurrection Medical Center Medical and Dental Staff Bylaws, regarding representation on your behalf. If you have any questions, please feel free to contact me.

Sincerely,

/s/ Edward J. Gorny, M.D.
Edward J. Gorny, M.D., Chairman
Appeals Committee

EJG:gc

Plaintiff's Exhibit K

Resurrection
Medical Center

7435 West Talcott Avenue Chicago, Illinois 60631-3746
312-774-8000

November 12, 1991

TO: Gregory Fahrenbach, M.D., Secretary
Executive Committee

FROM: Edward J. Gorny, M.D., Chairman /s/ E.G.
Appeals Committee

Dear Dr. Fahrenbach:

I received you letter of November 6, 1991 requesting a more detailed report of the actions taken by the members of the Appeals Committee at the October 9, 1991 meeting. No minutes were taken at that meeting.

The established format was that Dr. Edwin Adamski, Chairman of the Internal Medicine Division would present all the cases that were in question. Dr. Pudlo was to answer all the allegations that were felt to be present in each of these cases. This was done on an individual case by case. The members of the Appeals Committee were free to question both parties at any time. When all the members had been satisfied that the matter had been thoroughly presented, the Appeals Committee met in private.

It was clear as to why the cases in question had "fallen out". It was also clear as to the concern of the members of the Internal Medicine Division regarding the management of these cases. Yet, when confronted with the allegations, the answers of Dr. Pudlo seemed appropriate. The

explanations as offered by Dr. Pudlo were not refuted or questioned further by Dr. Adamski, leading the members of the Appeals Committee to believe that Dr. Adamski was reasonably satisfied with the answers that were given. Individual members of the Appeals Committee also questioned Dr. Pudlo, and were reasonably satisfied with his answers and explanations.

Therefore, after weighing the evidence as presented by Dr. Adamski and after hearing the answers as given by Dr. Pudlo, it was the conclusion of the members of the committee that the charges were not of sufficient magnitude to warrant prohibiting Dr. Pudlo's removal from Provisional Status. It was a unanimous vote (1 abstain) that Dr. Pudlo should be removed from Provisional Status.

EJG:gc

cc: T. Nassos, M.D., Chairman, Executive Committee
Sister Donna Marie, C.R.
Sister Bonaventure, C.R.
Joseph Pudlo, M.D.

Plaintiff's Exhibit L

Resurrection
Medical Center

7435 West Talcott Avenue Chicago, Illinois 60631-3746
312-774-8000

October 9, 1991

TO: T. Nassos, M.D., Chairman
Executive Committee

FROM: E.J. Gorny, M.D., Chairman
Appeals Committee

Dear Dr. Nassos:

The Appeals Committee met on October 9, 1991, to hear the appeal of Dr. Joseph Pudlo regarding his removal from Provisional Status. After careful consideration of the evidence presented, it was the opinion of the members of the Appeals Committee that, based on the evidence presented, Dr. Pudlo should be removed from Provisional Status.

/s/ E.G.
EJG:gc